

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 17 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0196
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CESAR ISAAC CRUZ,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20081922

Honorable Clark W. Munger, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Jonathan Bass

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes

Tucson
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K E L L Y, Judge.

¶1 A jury found appellant Cesar Isaac Cruz guilty of six felony charges arising from armed robberies he committed with a codefendant. On appeal he challenges the

trial court's denial of his motion to suppress incriminating statements he had made to a police detective. Finding no error, we affirm.

Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdicts. *See State v. Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). Over a three-day period in February 2008, Cruz and his codefendant robbed three convenience stores. At one of the stores, no physical evidence was found, and no surveillance video recording was available. At the other two stores, the robberies were videotaped, and Cruz's fingerprints were found at one of these two stores. Cruz and his codefendant eventually were identified as suspects and brought in for questioning, during which Cruz confessed to the robberies.

¶3 The state charged Cruz with three counts of aggravated assault with a deadly weapon or dangerous instrument, three counts of aggravated robbery, three counts of armed robbery, and one count of kidnapping. After a trial, the jury was unable to reach a verdict on the kidnapping charge, which was dismissed with prejudice. The jury found Cruz guilty of two counts each of aggravated assault with a deadly weapon or dangerous instrument, aggravated robbery, and armed robbery. The trial court imposed presumptive, concurrent prison terms, the longest of which was 10.5 years. This appeal followed.

Discussion

¶4 In the sole issue raised on appeal, Cruz argues the trial court abused its discretion in denying his motion to suppress his statements to a police detective, which he

maintains were involuntary. “We review the denial of a motion to suppress evidence for a clear abuse of discretion, viewing the evidence presented at the suppression hearing in the light most favorable to upholding the trial court’s factual findings and reviewing its legal conclusions de novo.” *State v. Esser*, 205 Ariz. 320, ¶ 3, 70 P.3d 449, 451 (App. 2003); *see also State v. Newell*, 212 Ariz. 389, ¶ 22, 132 P.3d 833, 840 (2006).

¶5 When Cruz was brought in for questioning, he was advised in English of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). He stated he understood those rights and agreed to talk to the detective. A Mexican citizen, Cruz was seventeen years old at the time of questioning. In an interrogation lasting about twenty minutes, Cruz and the detective discussed the robberies and the guns and vehicles used in them.¹ Cruz also identified himself and his codefendant in still photographs taken from the surveillance video recordings.

¶6 Cruz later moved to suppress his statements to the detective, arguing they were involuntary. At the suppression hearing, a detective who had interrogated Cruz in connection with a separate investigation testified he had “determined that [Cruz] was a Spanish-speaking person” and had therefore used a Spanish-speaking officer to interpret during his interrogation. Cruz introduced a minute entry from a juvenile court proceeding at which he had been provided an interpreter and also introduced his mother’s deposition testimony that he did not speak English well. The trial court viewed the

¹Cruz states in his brief that he was handcuffed in an interrogation room for an hour and a half. He does not, however, provide a corresponding citation to the record. *See Ariz. R. Crim. P. 31.13(c)(1)(iv), (vi)*.

recording of the detective's interrogation of Cruz before finding Cruz's statement voluntary and denying the motion.

¶7 “Confessions are presumed to be involuntary, and the state has the burden of proof by a preponderance of the evidence to show that a confession was voluntary and not the product of physical or psychological coercion.” *State v. Amaya-Ruiz*, 166 Ariz. 152, 164, 800 P.2d 1260, 1272 (1990). To determine whether the state has met this burden, the trial court must consider “the totality of the circumstances surrounding the confession.” *Id.* Pursuant to A.R.S. § 13-3988(B), the trial court

shall take into consideration all the circumstances surrounding the giving of the confession, including but not limited to the following:

1. The time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment.
2. Whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession.
3. Whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him.
4. Whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel.
5. Whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

¶8 When the defendant is a juvenile, the trial court should consider additional factors as well, including the age, mental state, and educational level of the juvenile; the

juvenile's previous experience with law enforcement or the courts; the length and method of the interrogation; the language used in giving the *Miranda* warnings; the juvenile's understanding of the charges; and whether the juvenile was warned he could be charged as an adult. *State v. Scholtz*, 164 Ariz. 187, 189, 791 P.2d 1070, 1072 (App. 1990).

¶9 Cruz maintains several of these factors were not mentioned by the trial court and “weighed in favor of finding that the statement was not voluntary.” He points out that he is a Mexican citizen whose first language is Spanish, but he was interrogated and given *Miranda* warnings in English. He also argues his age and lack of education, along with the fact that “he was not afforded the opportunity to consult with a parent or other adult,” should have weighed against a finding of voluntariness.

¶10 As the trial court found, however, Cruz had previous experience with the criminal justice system, spoke with the detective in English throughout the interrogation, and used English in the commission of the offenses. Likewise, his interrogation was relatively brief, and the detective told Cruz he could be charged as an adult. Finally, Cruz does not allege, nor does the record show, that the detective used force, coercion, or promises to induce his statements. *See State v. Stanley*, 167 Ariz. 519, 524, 809 P.2d 944, 949 (1991) (“[T]he critical element necessary to . . . a finding [that a statement was involuntary] is whether police conduct constituted overreaching.”). Thus, we cannot say the trial court abused its discretion in finding, after considering the totality of the circumstances of the interrogation, that Cruz's statements were voluntary.²

²As the state points out, quoting *State v. Montes*, 136 Ariz. 491, 667 P.2d 191 (1983), “[v]oluntariness and *Miranda* are two separate inquiries. ‘[T]he necessity of

Disposition

¶11 Cruz's convictions and sentences are affirmed.

VIRGINIA C. KELLY, Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PHILIP G. ESPINOSA, Presiding Judge

giving *Miranda* warnings to a suspect relates not to the voluntariness of a confession but to its admissibility.” *Id.* at 494, 667 P.2d at 194, quoting *State v. Morse*, 127 Ariz. 25, 29, 617 P.2d 1141, 1145 (1980). Although Cruz discusses the fact that the interrogating detective gave him *Miranda* warnings in English in the context of his voluntariness argument, he does not make a separate argument that the statements should have been suppressed because the police failed to comply with the requirements of *Miranda*.